

California Integrated Waste Management Board

Permitting and Enforcement Committee

February 19, 1998

AGENDA ITEM 3

ITEM:

CONSIDERATION OF AMENDMENTS TO POLICIES IN THE PROPOSED WASTE TIRE REMEDIATION AND STABILIZATION CONTRACT AND THE REALLOCATION OF 1997-98 FUNDING UNDER THE WASTE TIRE STABILIZATION AND ABATEMENT PROGRAM

I. SUMMARY

The Board approved implementation of the Waste Tire Stabilization and Abatement (WTSA) Program on August 31, 1994. Public Resources Code (PRC) section 42846 authorizes the Board to expend money from the California Tire Recycling Management Fund to perform any cleanup, abatement, or remedial work required to prevent substantial pollution, nuisance, or injury to the public health or safety at waste tire sites where responsible parties failed to take appropriate action as ordered by the Board.

Currently, the Board utilizes the 1996/97 WTSA Contract awarded to Sukut Construction, Inc. (SUKUT) to remediate/stabilize illegal waste tire sites in California. Once the site has been referred to WTSA Program from the waste tire enforcement program, the steps taken for site remediation/stabilization are as follows:

1. receive Board approval,
2. obtain property access,
3. contractor develops workplan,
4. complete Remediation/stabilization of site, and
5. Board pursues cost recovery.

The procedure to remediate an illegal waste tire site is contained in Attachment 1.

There are two conditions contained in the 1996-97 contract that are intended to help divert the disposal of illegal waste tires from landfills and encourage sending these waste tires to a reuse/transformation facility. The first condition allows the Board to provide a 30% incentive for cleanup alternatives that propose to send waste tires to reuse/transformation rather than landfill. The second condition requires that the waste tires being sent to that reuse/transformation facility not displace an existing source of tires. SUKUT must incorporate this policy in workplans for sites remediated under this contract when evaluating bids. The procedure describing the sub-contractor bid evaluation criteria to implement this policy is contained in Attachment 2.

II. PREVIOUS (BOARD OR COMMITTEE) ACTION

Since the inception of the WTSA Program, the Board has allocated funding and approved contract work as follows:

1994/95 contract in the amount of \$800,000 was awarded to SUKUT. Work on this contract concluded when the contract expired on June 30, 1997. Remediation projects were awarded to the subcontractor providing the most cost-effective proposal.

No 1995/96 contract was implemented. Contract funding allocation was included in the 1996/97 contract.

1996/97 contract in the amount **not to exceed \$2,250,000, but only funded** for \$1,599,251 was awarded to SUKUT and is valid until June 30, 1999. The board implemented the illegal waste tire end-use policy with this contract including the following provisions:

A 30% incentive for cleanup alternatives that proposes to send waste tires to a reuse/transformation facility rather than to a landfill

Waste tires being sent to that reuse/transformation facility cannot displace an existing source of tires.

The 1997/98 contract has not yet been awarded. The Board approved the draft Request for Qualifications (RFQ) for the contract to continue to offer the 30% incentive for cleanup alternatives that propose to send waste tires to a reuse/transformation facility rather than to a landfill; and required that the waste tires sent to that reuse/transformation facility not displace an existing source of California tires. The 1997/98 contract allocation is \$2,500,000

III. OPTIONS FOR THE BOARD OR COMMITTEE

Issue 1 - Augmentation of existing 1996/97 Waste Tire Stabilization and Abatement Contract

Committee Members may decide to:

1. Concur with staff's recommended augmentation of the 1996/97 contract by the maximum amount allowed by law (\$1,325,000), or
2. Augment the 1996-97 contract for a lesser amount to be determined by the Board, or
3. Leave the funding in the 1996-97 contract unchanged

Issue 2 - Board Policy

Committee Members may decide to:

1. Concur with staff's recommendation to amend the contract language regarding the policies pertaining to the 30% reuse/transformation option and displacement of an existing flow of

California tires, or

2. Amend the contract language regarding the policies pertaining to the 30% reuse/transformation use option and displacement of an existing flow of tires with language determined by the Board, or
3. Leave the contract language regarding the policies pertaining to the 30% reuse/transformation use option and displacement of an existing flow of tires unchanged.

IV. STAFF RECOMMENDATION

Issue 1 - Augmentation of 1996/97 Waste Tire Stabilization and Abatement Contract

Staff recommends augmenting the 1996/97 Waste Tire Stabilization and Abatement Contract (WTSA) by the maximum amount allowed by the law (\$1,325,000).

Issue 2 - Board Policy

Staff recommends the Board amend the language regarding the policies pertaining to the 30% reuse/transformation use option and displacement of an existing flow of tires in the WTSA Contract as follows.

"If the principal difference between the disposal and reuse/transformation option is cost, then the Contract Manager will direct the contractor to select the reuse/transformation option ~~if that option does not displace another source of waste tires that are currently serving that option~~ and if the total cost of the reuse/transformation option does not exceed 130 percent of the total least cost option for disposal." **Contractors or subcontractor will submit a disposal option bid in addition to an end-use option bid to determine if the end-use option exceeds 130% of cost of the least cost option for disposal. Additionally, require that the contractors or subcontractor submit documentation that the remediation tires are suitable for the identified end-use and that the end-use facility has adequate capacity to accept the waste tires. Documentation should be provided that the remediation tires were actually received at the identified end-use. In the event remediation tires are deemed unsuitable for end-use proposed by that contractor or subcontractor and must be landfilled, the Board will only pay the price contained in their landfill option bid.**

V. ANALYSIS

This agenda item discusses two issues. One issue is the augmentation of the 1996/97 SUKUT Contract. The other issue is the Board's policy regarding the end-use of tires as part of the WTSA contract. For analysis purposes, these two issues will be discussed separately.

Issue 1: Augmentation of the 1996/97 WTSA Contract

Background: The 1996/97 WTSA contract awarded to SUKUT is currently being expended and will terminate on June 30, 1999. The total amount of the contract is \$2,250,000 but is currently funded at \$1,599,251. Staff is proposing to fully fund this contract by bringing the funding for the contract up to the total \$2,250,000 by adding \$650,000. In addition, we propose that this contract be augmented by the allowable 30% bringing the total additional contract funds to \$1,325,000 and the total amount of the contract to \$2,924,251 (\$2,250,000 + 30%).

We would propose that this \$1,325,000 increase be taken out of the \$2,500,000 tire fund allocated for stabilization and remediation for Fiscal year 1997-98. \$500,000 has already been taken out and allocated to the Brackett Settlement Agreement. This would leave a balance of \$675,000 to be encumbered by the proposed 1997-98 RFQ. We would propose that the 1997-98 RFQ be for an amount not to exceed \$2,500,000 to allow additional funds to be placed into this contract from any unspent 1996-97 funds or also for funds which may be allocated to this program from the 1998-99 tire fund allocation.

Key Issues: Staff is preparing to begin several large projects utilizing the SUKUT contract. Based on these projects, staff can project a possible shortage of funds necessary to complete the projects. The 1997/98 contract must be awarded by June 30, 1998. If the contract is not awarded by that time, the unencumbered funds will revert back to the California Tire Recycling Management Fund. If the contract is awarded by June 30, 1998, a second contract will be implemented and operate concurrently with the 1996/97 contract.

Fiscal Impacts: Augmentation of the 1996/97 contract will have no overall fiscal impact. Remediation funds are allocated per fiscal year and encumbered in contracts. The contract is valid for up to three years from the fiscal year appropriation.

Findings: Augmentation of the 1996/97 contract will provide the maximum amount of funds to be utilized in the WTSA Program in the event the 1997/98 contract is not awarded.

Issue 2: Board Policy

Background: In 1996, the Board adopted the end-use policy in an effort to create an incentive to send remediation tires to reuse/transformation facilities rather than disposal at a landfill and also requires that the diversion to the end-use not displace an existing source of tires already serving that end-use. The 1997/98 contract further clarifies the existing source of tires as being California tires. Reviewing the bid process (Attachment 1), staff has identified the following problems.

30% Incentive:

The language in the Board contract with Sukut in regard to the 30% incentive reads as follows: "If the principal difference between the disposal and reuse/transformation option is

cost, then the Contract Manager will direct the contractor to select the reuse/transformation option if that option does not displace another source of waste tires that are currently serving that option and if the total cost of the reuse/transformation option does not exceed 130 percent of the total least cost option for disposal.”

Although providing a 30% incentive does encourage the Board's contractor (SUKUT Construction Inc.) to find end-uses in remediating waste tire sites, SUKUT along with **Board** staff is experiencing difficulty implementing this policy in the current contract. There is often confusion amongst the subcontractors on how the 30% applies to their bids. The following are the issues that are typically encountered during the implementation of the subcontracting process described on Attachment 1 and the criteria used to select an appropriate remediation option described in Attachment 2.

- On the smaller waste tire site cleanups, the 30% incentive is rarely a factor because the subcontractors will almost always submit end-use alternatives with no landfill option. However, on the larger cleanups, the subcontractors will typically submit both end-use and landfill alternatives but also options that incorporate a combination of the two. For example, a subcontractor may submit a bid that will landfill 50 % of the tires with the remaining 50 % being sent to an end-use. The confusion is how the 30% incentive is applied to the portion of the option that deals with the end-use.
- Bidders are often not able to identify the volume of tires from the remediation that are suitable for end-use. In many cases remediation tires are deemed unsuitable for end-uses due to their age or condition (full of soil or too large to be easily processed). It is conceivable that a subcontract could be awarded based on an end use and then after the remediation begins find out that 100% of the tires are not suitable for end use. Since the cost per ton of waste tires would incorporate the more expensive land use option, the Board could end up paying a higher fee for tires that may need to be ultimately landfilled. Also, a subcontractor may have been awarded a job based on an end use option and then ultimately need to landfill tires. This is unfair to other subcontractors who proposed landfill options.
- Tracking the quantity of tires that are actually sent to an end-use can be difficult for SUKUT and Board staff. For example, an end-use facility may be identified by the bidder to accept the waste tires from a remediation site. However, when the remediation is completed, the bidder hauls the remediation tires that have been removed from the site back to their own facility. Once at the facility, the bidder could substitute tires that may be more suitable for the identified end-use and send the remediation tires to a landfill. Again, the Board could end up paying a higher fee (exercising the 30% incentive option) for tires that may need to be ultimately landfilled.

Proposed Solution – Amend the language in the (WTSA) contracts to require that each subcontractor submit a landfill option bid to determine if the end-use option exceeds 30% of cost of the landfill option. Additionally, require that the subcontractor submit documentation that the remediation tires are suitable for the identified end-use and that the end-use facility has adequate capacity to accept the waste tires. In the event remediation tires are deemed unsuitable for end-

use proposed by that subcontractor and must be landfilled; the Board will only pay the price contained in the low cost landfilling bid received.

Displacement of an Existing Flow Waste Tires to an End-Use.

The current Contract encourages waste tires to be sent to an end-use so long as they do not displace a current flow of waste tires. SUKUT and Board staff are experiencing difficulty in implementing this policy.

How does the Board evaluate the flow of tires into an end-use facility and determine if the remediation tires are going to displace the existing flow of tires or the existing flow of California tires as proposed in the 1997-98 Contract? It is difficult to verify the displacement of an existing flow of tires to an end-use without doing an extensive audit of the end-users records. This policy could be interpreted to require remediation tires be sent to only new end use facilities rather than existing end use facilities, as any end-use facility must currently inventory taking tires which could be 'displaced' by remediation tires.

Proposed Solution: Rescind this policy.

Fiscal Impacts: The contract amount will remain the same regardless of the policy.

Findings: Amending this policy will eliminate a condition of the contract that has been difficult if not impossible to track. It will also minimize the confusion between SUKUT, the tire sub-contractors, and Board staff and as a result facilitate the stabilization and remediation of waste tire sites.

VI. FUNDING INFORMATION

Amount Proposed to Fund Item: \$1,325,000

Fund Source:

	Used Oil Recycling Fund
X	Tire Recycling Management Fund
	Recycling Market Development Revolving Loan Account
	Integrated Waste Management Account
	Other (Specify)

Proposed From Line Item:

X	Consulting & Professional Services
	Training
	Data processing
	Other (Specify):

Redirection:

If Redirection of Funds: \$1,325,000

Fund Source: Tire Recycling Management Fund

Line Item: 1997/98 Waste Tire Stabilization and Abatement Allocation

VII. ATTACHMENTS

1. Procedure to remediate an illegal waste tire site.
2. Procedure for subcontractor bid evaluation criteria.
3. Resolution 98 – 56
4. Resolution 98 – 62

Prepared By: Gale Rehberg *[Signature]* for *64*

Phone: 255-3895

Prepared By: Bob Fujii

Phone: 255-1300

Reviewed By: Charlene Herbst *CH*

Phone: 255-2301

Reviewed By: Dorothy Rice *D. Rice*

Phone: 255-2431

Reviewed By: _____

Phone: _____

Legal Review: Nathan F. Tobias

Date/Time: 2/9/98